

A GURMUKH SINGH
v.
STATE OF HARYANA
(Criminal Appeal No. 1609 of 2009)

B AUGUST 25, 2009
[DALVEER BHANDARI AND DR. MUKUNDAKAM
SHARMA, JJ.]

C *Penal Code, 1860 – ss. 302 and 304 (Part-II) – Murder or culpable homicide not amounting to murder – Punishment for – Accused inflicting single fatal blow on the head of deceased – Conviction and sentence u/s. 302 by courts below – Justification of – Held: Occurrence took place at the spur of the moment – Other co-accused did not indulge in any*
D *overt act – No intention or pre-meditation in mind of accused to inflict such injuries to deceased as were likely to cause death in ordinary course of nature – Thus, conviction and sentence of accused converted from s. 302 to s. 304 (Part II) and imposed rigorous imprisonment for 7 years.*

E **The question which arose for consideration in this appeal was whether on consideration of the peculiar facts and circumstances of the case, the conviction of the appellant u/s. 302 IPC by courts below is justified or should be converted to one u/s. 304 (Part II) IPC.**

F **Partly allowing the appeal, the Court**

G **HELD: 1. Appropriate sentencing is a very vital function and obligation of the court. There are significant features of the case which are required to be taken into consideration in awarding the appropriate sentence to the accused. The occurrence took place at the spur of the moment. Only the appellant inflicted a single lathi blow to the deceased which proved fatal. The other accused**

did not indulge in any overt act. There was no intention or pre-meditation in the mind of the appellant to inflict such injuries to the deceased as were likely to cause death in the ordinary course of nature. The incident took place on 8.1.1997 and the deceased remained hospitalized and ultimately died six days later. Trial court observed that there was no previous enmity between the parties. On consideration of the entire evidence including the medical evidence, the conviction of the appellant cannot be sustained u/s. 302 IPC, but the appropriate section under which the appellant ought to be convicted is s. 304 (Part II) IPC. The conviction and sentence of the appellant is converted from s. 302 IPC to one u/s. 304 (Part II) IPC and is sentenced to rigorous imprisonment for seven years. The fine as imposed by the trial court and as upheld by the High Court is maintained. The appellant would be entitled to get benefit of s. 428 Cr.P.C. [Paras 21, 22 and 25] [559-A, B; C-D; 561-B-C]

Jagrup Singh v. State of Haryana (1981) 3 SCC 616; *Gurmail Singh and Ors. v. State of Punjab* (1982) 3 SCC 185; *Kulwant Rai v. State of Punjab* (1981) 4 SCC 245; *Jagtar Singh v. State of Punjab* (1983) 2 SCC 342; *Hem Raj v. State (Delhi Administration)* (1990) Supp. SCC 291; *Abani K. Debnath and Anr. v. State of Tripura* (2005) 13 SCC 422; *Pappu v. State of M.P.* (2006) 7 SCC 391, referred to.

2. It is not laid down that in no case of single blow or injury, the accused cannot be convicted u/s. 302 IPC. In cases of single injury, the facts and circumstances of each case has to be taken into consideration before arriving at the conclusion whether the accused should be appropriately convicted u/s. 302 IPC or u/s. 304 (Part II) IPC. There are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case

A has to be seen from its special perspective. The proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should

B be according to the gravity of the offence. The relevant factors are as under: Motive or previous enmity; whether the incident had taken place on the spur of the moment; the intention/knowledge of the accused while inflicting the blow or injury; whether the death ensued

C instantaneously or the victim died after several days; the gravity, dimension and nature of injury; the age and general health condition of the accused; whether the injury was caused without pre-meditation in a sudden

D fight; the nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted; the criminal background and adverse history of the accused; whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock; number of other criminal

E cases pending against the accused; incident occurred within the family members or close relations; the conduct and behaviour of the accused after the incident; and whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment. [Paras 23 and 24] [559-D-H; 560-A-F]

F

Case Law Reference:

	(1981) 3 SCC 616	Referred to.	Para 14
G	(1982) 3 SCC 185	Referred to.	Para 15
	(1981) 4 SCC 245	Referred to.	Para 16
	(1983) 2 SCC 342	Referred to.	Para 17
H	(1990) Supp. SCC 291	Referred to.	Para 18

(2005) 13 SCC 422 Referred to. Para 19 A

(2006) 7 SCC 391 Referred to. Para 20

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
Nos. 1609 of 2009.

From the Judgment and Order dated 04.04.2008 of the
High Court of Punjab & Haryana at Chandigarh in Crl. Appeal
No. 163-DB of 1999.

Jaspreet Gogia for the Appellant.

Manjit Singh AAG, Kamal Mohan Gupta for the
Respondent.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. Leave granted.

2. This appeal is directed against the judgment of the
Punjab & Haryana High Court dated 4.4.2008 delivered in
Criminal Appeal No. 163-DB of 1999.

3. Brief facts which are necessary to dispose of the appeal
are in nutshell as under:-

The appellant Gurmukh Singh in this appeal has
challenged his conviction and sentence for the murder of Hazoor
Singh.

4. According to the prosecution version, on 8.1.1997 in the
morning, deceased Hazoor Singh had borrowed the tractor of
Lal Singh and tiller of Gurbachan Singh. Gurmej Singh P.W.5,
son of Hazoor Singh (deceased) was going along with Lal
Singh to return the tractor at the Dera of Gurbachan Singh. On
the way, accused Gurmukh Singh, son of Dayal Singh,
accompanied by the co-accused Niranjn Singh, Harbhajan
Singh and Manjit Singh armed with lathis, whose Dera was
nearby came and stopped the tractor. The appellant raised a

A lalkara that Hazoor Singh and his son should not be allowed to pass through the passage of which there was a dispute between the parties. Hazoor Singh was following the tractor. He advised the appellant to desist from stopping the tractor on which the appellant gave a lathi blow on the head of the
B deceased Hazoor Singh rendering him unconscious, resulting in his fall on the ground. Jagtar Singh, P.W.4 brother of the deceased, witnessed the incident and reached the spot. Gurdip Singh and Puran Singh also reached there. Jagtar Singh had caught Gurmukh Singh. In the process, Gurmej Singh P.W.5
C was also given lathi blow by Niranjn Singh. Gurmej Singh also caused injuries to Harbhajan Singh and Niranjn Singh. The deceased was taken to the hospital and on receiving the message, the Assistant Sub-Inspector of Police Jagdish Chander reached there and recorded the statement of Jagtar
D Singh at 7.15 p.m., leading to the registration of the First Information Report. He went to the place of occurrence, prepared rough site plan and took other steps of investigation. Injured Hazoor Singh was removed to PGI Hospital at Chandigarh, where he died on 14.1.1997 after three days on
E account of the head injury sustained by him.

5. The prosecution examined Dr. Rajinder Kumar P.W.1 who examined Hazoor Singh at 4.55 p.m. on 8.1.1997 and referred him to the Civil Hospital, Karnal, Dr. R. M. Singh P.W.2 who conducted the post-mortem examination on 15.1.1997,
F Balkar Singh Patwari P.W.3 who prepared the site plan, Jagtar Singh, P.W.4 author of the FIR and eye witness, Gurmej Singh, P.W.5 another eye witness and ASI Jarnail Singh P.W.6 who proved the investigation.

G 6. Dr. Rajinder Kumar P.W.1 who examined the deceased found the following head injury:

“Depression of skull bone at both parietal region at top, swelling both parietal region whole. No abrasion, no bruise visible. Advise X-ray skull A.P. lateral and obliquely.”

H

7. According to the Doctor, the cause of death of the deceased was the head injury sustained by him, which was sufficient to cause death in the ordinary course of nature.

A

8. It may be pertinent to mention here that the appellant Gurmukh Singh was accompanied by co-accused Niranjana Singh, Harbhajan Singh and Manjit Singh. Except the appellant Gurmukh Singh, all other accused were acquitted by the trial court, whereas the appellant Gurmukh Singh was convicted under section 302 of the Indian Penal Code and sentenced to imprisonment for life and a fine of Rs.1,000/-, in default of payment of which, to further under rigorous imprisonment for six months.

B

C

9. The High Court in the impugned judgment has upheld the judgment of the trial court and maintained the conviction and sentence awarded to the appellant Gurmukh Singh.

D

10. The appellant aggrieved by the judgment of the High Court preferred this appeal. We have carefully perused the judgments of the trial court and the High Court as also the evidence of witnesses. It is fully established from the evidence on record that the appellant had caused the injury to the deceased Hazoor Singh which proved fatal.

E

11. The short question which falls for consideration of this court is whether, on consideration of the peculiar facts and circumstances of the case, the conviction of the appellant under section 302 IPC should be upheld or the conviction be converted to one under section 304 Part II IPC? Appropriate sentencing is a very vital function and obligation of the court.

F

12. There are significant features of the case which are required to be taken into consideration in awarding the appropriate sentence to the accused:

G

- (1) Admittedly, the incident happened at the spur of the moment;

H

- A (2) It is clear from the evidence on record that the appellant was not using that path everyday.
- (3) The appellant gave a single lathi blow on the head of the deceased which proved fatal;
- B (4) The other accused did not indulge in overt act therefore, except the appellant, the other co-accused namely Niranjan Singh, Harbhajan Singh and Manjit Singh have been acquitted by the trial court;
- C (5) The incident took place on 8.1.1997 and the deceased remained hospitalized and ultimately died on 14.1.1997;
- D (6) The trial court observed that there was no previous enmity between the parties.

Therefore, it is abundantly clear that there was no pre-arranged plan or that the incident had taken place in furtherance of the common intention of the accused persons. When all these facts and circumstances are taken into consideration in proper perspective, then it becomes difficult to maintain the conviction of the appellant under section 302 IPC.

13. Section 304 IPC reads as under:

F "304. *Punishment for culpable homicide not amounting to murder.*- Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

G

H or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if

the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

14. This Court had an occasion to deal with cases of similar nature. In *Jagrup Singh v. State of Haryana* (1981) 3 SCC 616, the accused had inflicted a single blow in the heat of moment in a sudden fight with blunt side of Gandhala on the head of the deceased causing his death. According to the opinion of the doctor this particular injury was sufficient in the ordinary course of nature to cause death. But, according to this Court, the intention to cause such an injury was likely to cause death had not been made out. This Court altered the conviction of the accused from section 302 IPC to section 304 Part II IPC and the accused was directed to suffer rigorous imprisonment for a period of seven years.

15. In *Gurmail Singh & Others v. State of Punjab* (1982) 3 SCC 185, the accused had no enmity with the deceased. The accused gave one blow with the spear on the chest of the deceased causing his death. The injury was an incised wound. The Sessions Judge convicted the accused under section 302 IPC and sentenced him to rigorous imprisonment for life. The High Court affirmed the same. This Court, while taking into consideration the age of the accused and other circumstances, converted the conviction from section 302 IPC to one under section 304 Part II IPC and sentenced him to suffer rigorous imprisonment for five years and a fine of Rs.500/-, in default to suffer rigorous imprisonment for six months.

16. In *Kulwant Rai v. State of Punjab* (1981) 4 SCC 245, the accused, without any prior enmity or pre-meditation, on a short quarrel gave a single blow with a dagger which later proved to be fatal. This Court observed that since there was no pre-meditation, Part 3 of section 300 of the Indian Penal Code could not be attracted because it cannot be said that the accused intended to inflict that particular injury which was ultimately found to have been inflicted. In the facts and

A circumstances of that case, the conviction of the accused was altered from section 302 to that under section 304 Part II IPC and the accused was sentenced to suffer rigorous imprisonment for five years.

B 17. In *Jagtar Singh v. State of Punjab* (1983) 2 SCC 342, the accused in the spur of the moment inflicted a knife blow in the chest of the deceased. The injury proved to be fatal. The doctor opined that the injury was sufficient in the ordinary course of nature to cause death. This Court observed that the quarrel was of a trivial nature and even in such a trivial quarrel the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death. This Court altered the conviction of the appellant from section 302 IPC to section 304 Part II IPC and sentenced the accused to suffer rigorous imprisonment for five years.

E 18. In *Hem Raj v. State (Delhi Administration)* (1990) Supp. SCC 291, the accused inflicted single stab injury landing on the chest of the deceased. The occurrence admittedly had taken place in the spur of the moment and in heat of passion upon a sudden quarrel. According to the doctor the injury was sufficient in the ordinary course of nature to cause death. This Court observed as under:

F "14. The question is whether the appellant could be said to have caused that particular injury with the intention of causing death of the deceased. As the totality of the established facts and circumstances do show that the occurrence had happened most unexpectedly in a sudden quarrel and without pre-meditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause

G

H

death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, neither Clause I nor Clause III of Section 300 IPC will be attracted.....”

This Court while setting aside the conviction under section 302 convicted the accused under section 304 Part II and sentenced him to undergo rigorous imprisonment for seven years.

19. In *Abani K. Debnath & Another v. State of Tripura* (2005) 13 SCC 422, this Court, in somewhat similar circumstances, while converting the sentence from section 302 IPC to one under section 304 Part II IPC observed as under:

“This leads us to consider as to under what Section of law A-1 Abani K. Debnath is liable to be convicted in a given facts of the case. The prosecution evidence clearly discloses that the dao blow dealt by A-1 is preceded by a mutual quarrel. We have already noted that there was no common intention to kill Ranjit Das. From the nature of injuries it is disclosed that A-1 dealt only one dao blow perhaps in the spur of moment. The incident had taken place on 10.8.1990 and the deceased succumbed to injury on 15.8.1990 after a lapse of 7 days. Taking the prosecution evidence and medical evidence cumulatively we are of the view that the conviction of A-1 also cannot fall under Section 34 IPC but at the most under Section 304 Part II. We accordingly convert the sentence of A-1 Abani K. Debnath under Section 34 IPC to that one under Section 304 Part II IPC and sentence him to suffer R.I. for five years. The fine amount imposed by the trial court and Page 2091 affirmed by the High Court is maintained. It is stated at the Bar that A-1 has undergone about 18 months' imprisonment, if that is so, he will be entitled to get the benefit of Section 428 Cr.P.C.”

A 20. In another case *Pappu v. State of M.P.* (2006) 7 SCC 391, this Court observed as under:

B “.....The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

C

D

E

F

G It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body it was given and several such relevant factors.

H Considering the factual background in the case at hand it will be appropriate to convict the appellant under Section 304 Part II IPC, instead of Section 302 IPC as has

been done by the trial court and affirmed by the High Court. A
Custodial sentence of eight years would meet the ends of
justice. The appeal is allowed to the aforesaid extent.”

21. In the instant case, the occurrence had taken place at
the spur of the moment. Only the appellant Gurmukh Singh B
inflicted a single lathi blow. The other accused have not indulged
in any overt act. There was no intention or pre-meditation in the
mind of the appellant to inflict such injuries to the deceased as
were likely to cause death in the ordinary course of nature.

22. On consideration of the entire evidence including the C
medical evidence, we are clearly of the view that the conviction
of the appellant cannot be sustained under section 302 IPC,
but the appropriate section under which the appellant ought to
be convicted is section 304 Part II IPC.

23. Before we part with the case, we would like to clearly D
observe that we are not laying down that in no case of single
blow or injury, the accused cannot be convicted under section
302 IPC. In cases of single injury, the facts and circumstances
of each case has to be taken into consideration before arriving E
at the conclusion whether the accused should be appropriately
convicted under section 302 IPC or under section 304 Part II
IPC.

24. These are some factors which are required to be taken F
into consideration before awarding appropriate sentence to the
accused. These factors are only illustrative in character and not
exhaustive. Each case has to be seen from its special
perspective. The relevant factors are as under:

- (a) Motive or previous enmity; G
- (b) Whether the incident had taken place on the spur
of the moment;
- (c) The intention/knowledge of the accused while H
inflicting the blow or injury;

- A (d) Whether the death ensued instantaneously or the victim died after several days;
- (e) The gravity, dimension and nature of injury;
- B (f) The age and general health condition of the accused;
- (g) Whether the injury was caused without pre-meditation in a sudden fight;
- C (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- (i) The criminal background and adverse history of the accused;
- D (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
- E (k) Number of other criminal cases pending against the accused;
- (l) Incident occurred within the family members or close relations;
- F (m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

G These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court H must be to ensure that the accused receives appropriate

sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused. A

25. When we apply the settled principle of law which has been enumerated in the aforementioned cases, the conviction of the appellant under section 302 I.P.C. cannot be sustained. In our considered view, the accused appellant ought to have been convicted under section 304 Part II I.P.C. instead of under section 302 I.P.C. B

26. We accordingly convert the conviction and sentence of the appellant Gurmukh Singh from section 302 IPC to one under section 304 Part II IPC and sentence him to suffer rigorous imprisonment for seven years. The fine as imposed by the trial court and as upheld by the High Court is maintained. The appellant would be entitled to get benefit of section 428 of the Code of Criminal Procedure. C D

27. The appeal is partly allowed in the aforementioned terms and disposed of. E

N.J.

Appeal partly allowed.